

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 COMMUNITY LONG-TERM CARE PROGRAMS

CHAPTER 1439

HOME AND COMMUNITY BASED SERVICES FOR THE  
DEVELOPMENTALLY DISABLED/MENTALLY RETARDED

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Historical Note: This chapter is based substantially  
upon subchapter 7 of chapter 17-749, subtitle 8, Hawaii  
Administrative Rules. [Eff 10/19/83; am 6/23/86; R

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\$17-1439-1 Goal. Services provided under this  
chapter shall be directed at providing home and

community-based long-term care services which assist individuals with developmental disabilities to remain in or return home as an alternative to institutionalization. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-2 Definitions. As used in this chapter:

"Acuity level B" means the level of medical care and special services which are appropriately obtained from an ICF-MR.

"Adult day health services" means, the provision of coordinated health and developmental services to the recipient, as required by the individual habilitation plan, All services are equivalent to "active treatment" in an ICF-MR institution and all program trainers are supervised by a QMRP.

"Applicant" means an individual whose written application for medical assistance has been submitted to the department but who has not received final action.

"Assigned physician" means a medical doctor (M.D.) or a doctor of osteopathy (D.O.) who orders and directs the care needs of a medicaid recipient. The assigned physician may be a physician from a group practice who is designated as the primary physician or an alternate physician that has been delegated the role of the assigned physician by the client's initial assigned physician during the physician's absence.

"Case management" means services provided by an interdisciplinary team and QMRP to locate, coordinate, and monitor services prescribed for the client in the individual habilitation plan.

"Client" means an individual who meets the DD/MR H&CBS waiver program eligibility criteria and has been admitted into the program.

"Contractor" means an agency or individual contractor providing home and community-based services to a client under an agreement with the department.

"Environmental modifications" means the non-recurring provision of change to dwelling units to enable non-ambulatory clients to reside in community homes which require adaptive and safety alterations such as the installation of sidewalks and ramps; widening of doorways and corridors; removal of other

architectural barriers; and the enlargement of the bath facility to allow the movement of and ensure the safety of clients.

"Furnish", "furnishes", or "furnished" means items and services provided by or arranged for and which are under the direct supervision of a provider of home and community-based services.

"HCFA" means the United States Department of Health and Human Services, Health Care Financing Administration.

"Habilitation services" means in-home services prescribed by the interdisciplinary team in the individual habilitation plan which include activities related to developmental program objectives, community and social orientation, and the maintenance of appropriate and complete records. Persons providing services must be certified as passing the habilitation training curriculum.

"Home" means the client's own home or a home which meets all state licensure/certification requirements of a care, foster, or domiciliary home.

"ICF-MR" means an intermediate care facility for the mentally retarded or persons with related conditions, such as epilepsy, cerebral palsy, or other developmental disabilities as defined under part C of the developmental disabilities services and facilities construction act.

"Individual habilitation plan" (IHP) means a written plan based on the interdisciplinary team assessment that addresses identified client problems, indicates goals or outcomes, the specific type and frequency of service(s), and the provider(s) of services for each problem.

"Interdisciplinary team" means a team consisting of a licensed physician, a registered nurse, a social worker, and various specialized professionals and therapists (ie: psychologist, educator, and/or physical, occupational, speech, and/or hearing therapist) as needed. At least one member of the review team shall be a qualified mental retardation professional who has specialized training or at least one year of experience in treating or working with the mentally retarded.

"NF" means nursing facility.

"Personal care services" means the health oriented assistance to the client in activities of daily living,

as specified in the individualized habilitation plan. Personal care services include assistance in bathing, dressing, toileting, positioning, transfers, feeding, special incontinence care, supervision of medications, special diet preparations, and/or other specialized treatments. Personal care services are supervised by a Hawaii licensed registered nurse and are provided by qualified personnel who have received training as designated by the department.

"Qualified mental retardation professional" (QMRP) means an individual who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and who has graduated from an accredited university or is licensed/certified in a field related to developmental disabilities as stated in the waiver.

"Respite care" means care provided in a State licensed foster/care home or a certified ICF/MR facility on a limited basis for relief to the primary caretaker, client's medical recuperation or unmanageable behavior.

"Skilled nursing" means the provision of professional nursing services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological and sociological sciences of nursing theory, as the basis for assessment, diagnosis, planning, intervention and evaluation in the promotion and maintenance of health and the restoration of optimum functioning. Skilled nursing services are prescribed by the Interdisciplinary team and provided by a Hawaii licensed registered (R.N.) or practical nurse (L.P.N.).

"UR" means utilization review of home and community-based services provided to clients to determine whether continued stay is appropriate. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-3 Eligibility requirements. (a) Home and community-based services shall be available to individuals:

- (1) Who are eligible for federally funded medical assistance;
- (2) Authorized at acuity level B by the department's medical consultant or appointed agent;

- (3) Whose average cost of care will be less than the cost of institutional ICF/MR care.
  - (b) Continued eligibility for home and community-based services shall be redetermined according to the following schedule:
    - (1) Eligibility for federally funded medical assistance shall be redetermined annually;
    - (2) Acuity level of medical care shall be redetermined and reauthorized annually; and
    - (3) Cost of care shall be reviewed monthly for compliance with contracted rates.
- [Eff JUN 29 1992 ] (Auth: HRS §346-14)  
 (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-4 Provision of home and community-based services. (a) Home and community-based services shall be available to clients who have been approved by the department and shall include any service approved by HCFA in the waiver program, including:

- (1) Case management;
- (2) Adult day health;
- (3) Habilitation;
- (4) Personal Care;
- (5) Respite;
- (6) Skilled nursing;
- (7) Environmental modifications;
- (b) Services shall be approved by the interdisciplinary team and included in the client's IHP.
- (c) Provision of services shall be available to otherwise qualified individuals based on the conditions, as defined by HCFA, of the:
  - (1) Waiver of statewideness;
  - (2) Waiver of comparability of services; and
  - (3) Level of funding established by the legislature. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-5 Exclusion of developmentally disabled/mentally retarded waiver program services. Home and community-based services shall not include services provided during periods of time when the

client has been admitted on an inpatient basis to either an acute care or long-term care facility.  
[Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-6 Determining client's need for home and community-based services. The determination of need for home and community-based services shall be based upon the following requirements:

- (1) The individual shall be deemed to be mentally retarded in accordance with the provisions of chapter 333, HRS;
- (2) The interdisciplinary team shall assess the client to be in need of acuity level B services; and
- (3) The department's medical consultant or appointed agent shall authorize admission of the client to the home and community-based services waiver program. Authorization granted by the department's medical consultant or appointed agent shall be valid for not more than thirty days from the date of authorization. [Eff JUN 29 1992 ]  
(Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-7 Contractors of home and community based services. (a) The contractor shall submit to the department a written request to participate in the waiver program.

(b) All contractors shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and licensing requirements.

(c) Contractors receiving reimbursement for medicaid waiver services shall enter into a written agreement with the department.

(d) The agreement with the department shall be terminated when the contractor fails to provide home and community-based services in accordance with the terms stipulated in the agreement. [Eff JUN 29 1992 ]  
(Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

\$17-1439-8 Payment for services. (a) The maximum payment for services for each client shall not exceed the HCFA approved rates of payment.

(b) Medicaid expenditures for periods of inpatient care in an acute care or long-term care facility shall not be computed into the annual cost of care for the client. [Eff JUN 29 1992 ] (Auth: HRS \$346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

\$17-1439-9 Utilization control. (a) Contractors shall only serve eligible clients, whose care needs may be met by the provision of home and community-based services.

(b) Each evaluation, IHP, certification and recertification statement shall be written and entered in the client's record.

(c) Home and community-based service contractors shall meet the following conditions:

- (1) The interdisciplinary team shall develop within one week a written individual habilitation plan which prescribes H&CBS services, specifying the goals, frequency and type of providers;
- (2) The contractor shall implement the individual habilitation plan;
- (3) A QMRP member of the interdisciplinary team shall review monthly, each client's individual habilitation plan to:
  - (A) Determine whether the client's needs are being met; and
  - (B) Determine the effectiveness of the services;
- (4) An interdisciplinary team shall evaluate, at least annually, the following:
  - (A) Each client's individual habilitation plan of care;
  - (B) The effectiveness of the individual habilitation plan of care objectives; and
  - (C) Assess the client's continuing need for home and community-based services.

(d) Home and community-based service contractors shall require of a physician a written certification

statement that the client requires home and community-based services as follows:

- (1) Admission certification shall be provided by a physician on admission;
- (2) A recertification statement shall be provided by the physician at least annually after the admission certification until discharge from home and community-based services;
- (3) The written certification and recertification statements shall be placed in each clients active medical record; and
- (4) The written certification and recertification statements shall clearly indicate the client's need for home and community-based services, and shall include:
  - (A) A physician's signature or initials clearly identified with the acronym "M.D." for medical doctor, or "D.O." for doctor of osteopathy; and
  - (B) The date of certification or recertification by a physician at the time certification or recertification is signed by the physician. [Eff JUN 29 1992 ]  
(Auth: HRS §346-14) (Imp: 42  
C.F.R. §§440.180, 435.232)

§17-1439-10 Other basic service requirements.

(a) Contractors of home and community-based services shall establish and implement written policies and procedures that govern access to, duplication of, and dissemination of information from applicants' and clients' records.

(b) The following information about applicants and clients shall not be released:

- (1) Names and addresses;
- (2) Eligibility status, the amount of assistance, or both;
- (3) Medical services provided;
- (4) Social and economic conditions or circumstances;
- (5) The department's evaluation of personal information; and



- (6) Medical data, including diagnosis and past history of disease or disability.
- (c) The conditions for release of information by the department shall be in accordance with departmental rules.
- (d) Clients shall have freedom in the selection of any qualified contractor from whom the client may obtain waiver services.
- (e) Contractors of home and community-based services shall admit and provide home and community-based level of care, treatment, and services to medicaid clients without discrimination, separation, or any other distinction on the basis of race, color, national origin, or mental or physical disability in accordance with applicable federal and state statutes, rules and regulations.
- (f) Contractors of home and community-based services shall retain for seven years from the date of a client's discharge all medical records pertaining to that client. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§§17-1439-11 to 17-1439-14 Reserved

§17-1439-15 Termination of home and community-based services. (a) Services to clients of home and community-based services program shall be terminated when:

- (1) A client is deemed by the interdisciplinary team to no longer require home and community-based services;
  - (2) The client or guardian, or both, requests termination from the program; or
  - (3) The client expires.
- (b) Clients shall be discharged from home and community-based program services upon admission to a hospital, NF, or ICF-MR. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-16 Hearings and appeals. An appeal and hearing for applicants and clients shall be available when the department suspends, terminates, or decreases

service. The hearings shall be conducted in accordance with departmental rules. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §440.180, 435.232)

§17-1439-17 Sharing of federal financial participation payment penalty assessment. The department shall allocate to the contractor any or all federal financial participation payment penalties for failure to meet utilization control requirements of the contractor which are assessed the department by the Health Care Financing Administration of the Department of Health and Human Services. The amount shall be determined by a committee composed of representatives from the department, the department of commerce and consumer affairs, the hospital association of Hawaii, and the Hawaii long-term care association. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: 42 C.F.R. §§440.180, 435.232)

§17-1439-18 Authorization of services. The home and community-based services for the developmentally disabled program is authorized by HCFA under the Social Security Act (section 1915(c)) related to home and community-based services waivers, and by the Hawaii Revised Statutes. [Eff JUN 29 1992 ] (Auth: HRS §346-14) (Imp: Pub. L. No. 97-35, §2176 (1981); 42 C.F.R. §§440.180, 435.232)